

Sunset Review in the States¹

Joint Sunset Review Committee

Asm. Alyson Huber, Chair

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By Sarah Weaver

A sunset review is an assessment of whether a state entity is necessary, effective, and efficient. Sunset review is distinguished from other forms of oversight by its systematic, deadline-driven approach.²

Sunset review gained traction in state governments in the late 1970s, borne of the Watergate scandal and the ensuing crisis of confidence in government.³ Colorado enacted the first sunset law in 1976,⁴ the impetus being a political action group intent on curtailing governmental waste and “giving public officials and citizens a handle on big government.”⁵ The idea quickly caught on, and by the end of 1976, four states adopted sunset laws.⁶ Nineteen joined by 1977,⁷ and by January 1981, a total of thirty-six states enacted sunset laws.⁸ Even though not all eventually adopted sunset review, between 1976 and 1982 all fifty state legislatures considered of some

¹ Many thanks to Michael Smith, Caleb Rowe, David Hall, and Jessica Ryan who made available their report, “California Sunsets: An Analysis of Sunset Review for the Golden State” from UC Hastings’ Current State and Local Government Problems seminar, Spring 2010.

² Richard C. Kearney, *Sunset: A Survey and Analysis of the State Experience*, 50 PUB. ADMIN. REV. 49, 49, 53 (1990); Bruce Adams & Betsy Sherman, *Sunset Implementation: A Positive Partnership to Make Government Work*, 38 PUB. ADMIN. REV. 78, 78 (1978).

³ Mark B. Blickle, The National Sunset Movement, 9 SETON HALL LEGIS. J. 209, 212 (1985-1986). See also James W. Drury, *Sunset Laws-A New Type of Legislative Oversight?*, ST. & LOC. GOV’T REV., Sept. 1982, at 107.

⁴ COLO. REV. STAT. § 24-34-104 (Supp. 1977). The preamble to this first sunset law captured the prevailing political sentiment: “The General Assembly finds that state government actions have produced a substantial increase in numbers of agencies, growth of programs, and proliferation of rules and regulations and the whole process developed without sufficient oversight, regulatory accountability, or a system of checks and balances.”

⁵ Mark B. Blickle, The National Sunset Movement, 9 SETON HALL LEGIS. J. 209, 212 (1985-1986).

⁶ James W. Drury, *Sunset Laws-A New Type of Legislative Oversight?*, ST. & LOC. GOV’T REV., Sept. 1982, at 107.

⁷ Id.

⁸ Richard C. Kearney, *Sunset: A Survey and Analysis of the State Experience*, 50 PUB. ADMIN. REV. 49, 49-57 (Jan.-Feb. 1990).

kind of systemic oversight. Initially the sunset process focused on minor or inactive programs, but in the early 1980s the focus switched to professional licensing and economic development programs.⁹ The most common outcomes of early sunset reviews were not terminations of agencies and boards, but administrative and structural changes.¹⁰

Currently, twenty-three states have an active sunset review process in one form or another.¹¹ Some of these states employ comprehensive sunset review through all forms of government, while others are limited to regulatory agencies or professional licensing authorities.

Most states with sunset reviews report benefits from the process, principally efficiency and public accountability.¹² A study on states' sunset reviews prior to 1990 concluded that “state executive branches have been cleaned up through the deletion of nonfunctional, redundant, or unnecessary entities,” and “state legislatures have imposed substantive, procedural, and cross-cutting modifications that increase accountability, efficiency, and effectiveness among the myriad agencies, boards, and commissions . . . [of] the typical executive branch.”¹³

Best practices and lessons learned

Three states have graciously agreed to present their sunset review processes to the Joint Sunset Review Committee: Texas, Delaware, and Florida. Each was chosen to highlight a particular aspect of their experience – Texas is often recognized as the standard for sunset review; Delaware has also achieved considerable success over several decades, especially in light of its modest resources, and Florida is a situation in which sunset review, while attempted, did not last.

To assist going forward, a representative from the Pew Center on the States will present Results First, an analytic policy tool that may be useful in California's ongoing oversight.

⁹ Id.

¹⁰ Id.

¹¹ "California Sunsets: An Analysis of Sunset Review for the Golden State: State Compendium," UC Hastings' Current State and Local Government Problems Seminar, Spring 2010.

¹² Mark B. Blickle, *The National Sunset Movement*, 9 SETON HALL LEGIS. J. 209, 229 (1985-1986) (citing COMMON CAUSE, THE STATUS OF SUNSET IN THE STATES: A COMMON CAUSE REPORT 10 (1982)).

¹³ Richard C. Kearney, *Sunset: A Survey and Analysis of the State Experience*, 50 PUB. ADMIN. REV. 49, 53, 56 (1990).

Texas Sunset Advisory Commission

In 1977, the Texas Legislature created the Sunset Advisory Commission (Commission) to identify and eliminate waste, duplication, and inefficiency in government agencies. The 12-member Commission is a legislative body that reviews the policies and programs of more than 150 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency's operations and activities. The Commission seeks public input through hearings on every agency under sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under sunset review are automatically abolished unless legislation is enacted to continue them.¹⁴

About 130 state agencies are subject to the Texas Sunset Act. The Sunset Act, which became effective in August 1977, specifies each agency's review date. Agencies under Sunset typically undergo review once every 12 years.

Certain entities, such as universities and courts, are not subject to the Sunset Act. Some constitutionally created agencies, such as the Board of Pardons and Paroles and the Board of Trustees of the Teacher Retirement System of Texas, are subject to sunset review but not abolishment.

Generally, the Legislature groups and schedules agencies for review by function to allow the examination of all major state policies related to a particular function at once, such as health and human services, natural resources, and financial regulation. About 20 to 30 agencies go through the sunset process each legislative session. The Legislature may change the review schedule to enable a close look at certain agencies of special legislative interest. By using the sunset process to examine problem areas, the Legislature further strengthens the accountability of state agencies.¹⁵

¹⁴ From Texas Sunset Advisory Commission Web site, <http://www.sunset.state.tx.us/>

¹⁵ Sunset Advisory Commission, "Guide to the Sunset Process," December 2009, p. 1.

Since sunset review's inception in 1978, 58 agencies have been abolished and another 12 agencies have been consolidated. In addition, even as the scope of reviews has expanded, the Legislature has approved a large majority of the recommendations of the Sunset Commission. 425 agencies were reviewed between 1978 and 2008, 327 of these were continued, 35 were eliminated, 12 were consolidated, and 2 agencies were separated.¹⁶ Estimates from reviews conducted between 1982 and 2009 indicate a potential 27-year revenue savings of approximately \$783.7 million, compared with expenditures of \$28.6 million for the Sunset Commission. Based on these estimates, every dollar spent on the sunset process has earned the State more than \$27 in return.¹⁷

Delaware Joint Sunset Committee

The Sunset Law in Delaware, enacted in 1979, provides for the periodic legislative review of state agencies, boards, and commissions.

The Joint Sunset Committee (JSC) is responsible for guiding the sunset review process. The JSC is a bipartisan committee comprised of ten legislators: five from the Senate and five from the House of Representatives. The JSC has conducted 209 sunset reviews on 105 entities since 1981.

Sunset reviews are generally conducted over a ten to twelve month time period commencing in July. Typically, agencies are reviewed once every six years. A comprehensive review of each agency, based on statutory criteria, is performed by the Executive Director of the JSC, who subsequently prepares the draft report for use by the JSC during public hearings. Public hearings are a critical component of the sunset review process, as they provide an opportunity for the JSC to best determine if the agency is protecting the public's health, safety, and welfare.

At the conclusion of a sunset review, the JSC may recommend the continuance, consolidation, reorganization, transfer, or termination (sunset) of an agency, board, or commission. Although

¹⁶ Sunset Advisory Commission, "Guide to the Sunset Process," December 2009, p 12.

¹⁷ Sunset Advisory Commission, "Guide to the Sunset Process," December 2009, p 11.

the JSC has sunset several agencies since its first reviews, the more common approach has been for the JSC to work with the entity under sunset review to formalize specific statutory and non-statutory recommendations, with the goal of improving the entity's performance and government accountability.¹⁸

Florida Joint Sunset Committee

The 2006 Florida Legislature enacted the Florida Government Accountability Act (Act) that established a sunset review process to determine if there was a public need for the continuation of a state agency, its advisory committees, or its programs.

The Act provided for the creation of the Joint Sunset Committee to oversee the independent review process and make recommendations to abolish, continue, or reorganize the agency under review. The Act also provided that the Senate and House may conduct independent reviews regarding the scheduled agency sunsets, and set criteria to be used in the sunset review process.

An agency subject to review by the Legislature was to be abolished on June 30 following the year of the agency review, unless continued by the Legislature. A reviewed agency was not permitted to be abolished unless all of the services for which the agency had responsibility had been repealed, revised, or reassigned; and adequate provisions were made for all duties and obligations relating to debt.¹⁹

Florida's sunset process reviewed 10 major entities.²⁰ While it did eliminate some obsolete advisory bodies, it did not eliminate or materially change any reviewed agencies, and made only relatively minor changes in authorizing statutes. Sunset itself was eliminated after two cycles.²¹

Pew Center on the States: Results First

The Pew Center on the States is a division of The Pew Charitable Trusts. The Pew Center is a nonprofit organization that applies a rigorous, analytical approach to improve public policy,

¹⁸ From 2010 Joint Sunset Committee Final Report, May 31, 2011.

¹⁹ From the Florida Joint Legislative Sunset Committee Web site, <http://www.floridasunsetreviews.gov/>

²⁰ Id.

²¹ From Gary VanLandingham, Ph.D.'s presentation to the California Joint Sunset Review Committee, June 8, 2011.

inform the public and stimulate civic life.²² Results First is a project that aids states in implementing cost-benefit analysis tools which help identify policy options that provide the best outcomes for citizens and improve states' fiscal health.

Results First helps states achieve this goal by applying four key elements of policy decision making:

1. Use the best information. In the past 20 years, high-quality research has evaluated many public programs to identify those that work the best. Results First's cost-benefit analysis models synthesize this research to enable policy makers to identify policies that will produce the greatest outcomes, such as maximizing public safety, at the least cost.
2. Design policies that work together as a total package. Often, investments or cuts in one program can affect costs and outcomes in others. The cost-benefit analysis tools enable states to examine a wide range of potential options and craft integrated portfolios that collectively produce the best outcomes based on the state's unique characteristics.
3. Learn from other states. Results First is conducting a comprehensive nationwide assessment to identify best practices in using cost-benefit analysis, which will enable states to apply lessons learned in their own policy making.
4. Create the climate needed to make decisions based on results. Too often, states make investments in programs based on anecdotes or external pressures rather than sound research. Results First can help state leaders build the case for adopting evidence-based policies and programs.²³

²² The Pew Center on the States, "About Us," available at <http://www.pewcenteronthestates.org/about.aspx>

²³ From Results First factsheet, Pew Center on the States.